IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.

LETTERS PATENT APPEAL NO.41 OF 2005.

WITH

WRIT PETITION NO. 5180 OF 1996.

National Textile Corporation (SM) Ltd..... ... Appellant.

V/s

Devraj Chandrabali Pai .... Respondents.

Mrs.M.H. Doshi, Adv. For the petitioner.

Mrs.A.I.Helekar, Adv. For respondents.

CORAM: V.G. PALSHIKAR
AND
D.B. BHOSALE, JJ.
19.9.2005

Oral Judgment: (**Per Palshikar, J.)**

Being aggrieved by an order passed by the learned Single Judge of this Court on 18.8.2004 the appellant has preferred this appeal under clause 15 of the Letters Patent Appeal of this High Court of Judicature at Bombay. Facts giving rise to this appeal stated briefly are as under:

2. The National Textile Corporation was the employer and the present respondent was the employee who was at the relevant time during the relevant period employed

with Gold Mohur Mills Limited which has been taken over by National Textile Corporation. After take over the Corporation therefore became the employer. During this employment the employee was charge sheeted by the employer for certain alleged misconduct. The misconduct was held proved and the services of the appellant were terminated on 23.9.1980. Since the petitioner was not reinstated he filed an application under section 78 of the Bombay Industrial Relation Act, 1946 contending that the enquiry held against the employee was illegal. The Labour Court on consideration of the material on record allowed the application of the petitioner holding that the punishment of dismissal was shockingly disproportionate to the misconduct proved and therefore allowing the application of the petitioner and directed reinstatement with continuity of services with full back wages.

3. The employer preferred an appeal before the Industrial Court challenging the order of Labour Court on several grounds. The Industrial Court accepted the challenges made by the employer and set aside the order of Labour Court by which the employee was granted reinstatement. It proceeded to dismiss the complaint filed by the employee.

4. This order of the Industrial Court was challenged before this Court by way of writ petition which was title as Writ Petition under Article 226 and 227 of the Constitution of India. It was described as a petition also in the matter of application made before the Labour Court and also in the matter of order passed by the Industrial Court between the employer and the employee. According to the High Court, Appellate Side Rules, 1960 such petition is liable to be heard by the learned Single Judge. The matter was therefore assigned to the Court of the learned Single Judge and the learned Single

Judge by the impugned order held that there was no jurisdictional or legal error committed by the Industrial Court and therefore the order passed by the Industrial Court was maintained. It is this order dated 18.8.2004 which is questioned in this appeal filed under clause 15 of the Bombay Letters Patent Appeal.

5. At the outset the learned counsel appearing on behalf of the appellant was asked to establish the maintainability of this appeal in view of decided position in law in regard to maintainability of such appeals against orders passed under Article 227 of the Constitution. The learned counsel relied on several judgments of this Court and the Supreme Court of India and contended that this being a case instituted both under Articles 226 and 227 those decisions in relation to article 227 will not apply in the present case and the appeal is maintainable. Such arguments are almost regularly made in this Court contending that Letters Patent Appeal is maintainable in almost every case. In our opinion, it is therefore necessary that this contention is reexamined in details.

6. This Court was established by Letters Patent issued by Queen of England for the Presidency Town of Bombay in 1865. This Letters Patent or section defines the jurisdiction of various types of petitions instituted in this Court by that chapter. One such jurisdiction was to hear an appeal from the order of Single Judge of this Court which later on came to be popularly called as intra court appeal. Clause 15 created a right in a litigant to appeal covered by provisions thereunder.

7. In order to decide the maintainability of an appeal under this clause it would therefore be necessary to examine the clause in its entirety for which purpose it is necessary to quote the same verbatim:

"15. **Appeal from the Courts of original jurisdiction of the High Court in its appellate jurisdiction.-** And we do further order that an appeal shall lie to the said High Court of Judicature at (Madras), (Bombay), Fort William in Bengal from the judgment *(**not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by** a Court subject to the superintendence of the said High Court* and not being an order made in the exercise of a revisional jurisdiction, and not being a sentence or order passed or made in exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, *or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act,* ***and that notwithstanding anything herein before provided, an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, (on or after the first day of February 1929) in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit***

one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our heirs or successors in Our or Their Privy Council, as hereinafter provided."

From clause 15 quoted above it will be seen that under that clause appeals are definitely not maintainable in the following categories:

i) Where the impugned judgment is passed in second Appellate jurisdiction;

ii) A judgment passed in exercise of revisional jurisdiction;

iii) A Judgment passed in exercise of the power of superintendence and under the provisions of section 107 of the Government of India Act;

iv) Any sentence imposed in exercise of criminal jurisdiction.

However it is also provided that where leave is granted by the learned Single Judge disposing of a Second Appeal, on grant of such leave an appeal against such order will lie.

8. In so far as other aspects are concerned there has never been any dispute regarding maintainability of the appeal under this clause. A dispute always has been regarding maintainability of an appeal under this clause 15 against orders made in writ petitions in exercise of powers of this Court under article 227 with the title mentioning the petition to be under Articles 226 and 227 of the Constitution. That appeal under this clause is not maintainable against the orders made under Article 227 of the Constitution

is also undisputed. The dispute often comes when the petitions filed in this Court are titled as one under Articles 226 and 227 of the Constitution of India. It is also not in dispute that where petitions are squarely under Article 226 of the Constitution an appeal can lie under this clause.

9. We will consider this aspect by taking into consideration the scope and extent of Article 227 from its inception. Before enactment of the Constitution of India the business of Government of India was done in accordance with provisions of Government of India Act, 1919. Section 107 of that act conferred power of superintendence on all the High Courts. This power of superintendence was given to the High Court over all Courts which were subordinate to it. This power of superintendence thus existed since 1919 under the Government of India Act, 1919.

10. Thereafter Government of India Act, 1935 was passed and this power of superintendence was continued through section 224 of that act. It was bodily lifted from section 107 of the 1919 act. Provisions thereof are absolutely identical.

11. In effect therefore Article 227 replaces section 107 of the Government of India Act, 1919 and therefore by necessary implication Article 227 of the Constitution of India is to be read in place of section 107 of the Government of India Act, 1919. So read no appeal under clause 15 of the Letters Patent is maintainable against an order made under Article 227 of the Constitution. It was in the light of this legal position that several judgments of the Supreme Court categorically held that the appeal is not tenable. Therefore as already observed above there can be no dispute about the proposition of law that any order made under Article 227 of the Constitution of India is not appealable under clause 15 of the Letters patent.

12. The dispute as aforesaid is in cases where Articles 226 and 227 are mentioned in the title of the petition. In our opinion, mere mention of Article 226 will not make an appeal maintainable under clause 15 if in pith and substance what was to be exercised as jurisdiction of this Court and what was exercised was the supervisory jurisdiction of this Court.

13. We would like to emphasize another aspect of the writ jurisdiction. Writ of certiorari was one of the five writs which this Court can issue. The power to issue was first conferred on the Supreme Courts of Bombay, Calcutta and Madras by their respective charters and thereafter the power was inherited by successor High Courts under the High Court Act, 1861. However in so far as the High Court of Judicature at Bombay is concerned the charter of the Letters Patent of 1865 specifically conferred the power to issue writs in this Court. But this power was territorially limited. This limitation seriously impaired supervisory jurisdiction which the High Court exercised through writ of certiorari and it was therefore that the Government of India Act contained the provisions of section 107 to widen the extent of the supervisory jurisdiction. It will be seen that the power of superintendence was exercised by Courts before 1919 by issuing writ of certiorari or orders in the nature of certiorari to meet the ends of justice. This widening of the power of supervisory jurisdiction over the entire territory of the High Court of Bombay was necessary in other States also and therefore the Government of India Act, 1919 was enacted containing provisions of section 107. Later on this provision was substituted by section 224 of the Government of India Act, 1935 and after promulgation of the Constitution of India it was article 227 of the Constitution.

14. In our opinion, after framing of section 107 of the Government of India Act, 1919

the need to issue writ of certiorari or an order or a direction in the nature of certiorari stood fulfilled by the provisions of section 107. It was converted into Constitutional provision by Article 227 of the Constitution of India and therefore since 1919 there is no need for the Courts in India to depend on a writ of certiorari or order in the nature thereof for correcting the jurisdictional legal or apparent error on the face of record. Article 227 fully clothed this Court to do all that under Article 227. Therefore all judicial and quasi judicial Tribunals functioning in the State of Maharashtra came under the supervisory jurisdiction of this Court. In so far as the supervision and jurisdictional control over these Courts is concerned Article 227 of the Constitution of India is adequate and consequently there is no need to resort to writ of certiorari under Article 226 of the Constitution of India.

16. In our opinion, only in cases where a judicial or quasi judicial authority or Tribunal is not covered by the power of superintendence under Article 227 that a writ of certiorari or a writ in the nature of certiorari may be issued to prevent occurring of injustice. It is only in such specific instances that this Court may be called upon and may be required to exercise the jurisdiction of issuing prerogative writs including writ of certiorari. In all other cases where the orders, awards, judgments, decisions etc. of the Tribunals judicial or quasi judicial subject to superintending powers of this Court can be corrected under Article 227 of the Constitution of India. In all such cases there is therefore no question of invoking powers under Article 226 of the Constitution of India. That being the position according to us, merely because Article 226 is mentioned in the cause title of an Appeal under clause 15 cannot be held maintainable because in all such cases of orders by Tribunals covered by Article 227 the jurisdiction required to be

invoked and exercised is always that under Article 227.

17. In our opinion, because at tome point of time in the history of Courts in India resort was taken to the writ of certiorari which can issue only under Article 226 for exercising powers of superintendence over Tribunals or authorities subordinate to this Court, provision of section 107 of the Government of India Act, 1919 took care of this and therefore resort to Article 226 for correcting jurisdictional error was not necessary. Since the inception of Government of India Act, 1919 therefore there remained no cause in this Court to exercise its prerogative writ of certiorari to correct jurisdictional errors of Tribunals subordinate to it whether they be judicial or quasi judicial.

18. It is in this light that we intend to examine the judgments relied upon by the learned counsel appearing on behalf of the appellant. In ***Ratnagiri District Central Co-operative Bank Ltd.*** Vs. ***Dinkar Kashinath Watve and Others,*** 1993 Supp. (1) SCC 9 the Supreme Court found as a fact that the relief granted by the learned Single Judge was under Article 226 and not under Article 227 and therefore appeal was held maintainable. In the present case admittedly order is passed by the Tribunal, subordinate to High Court viz. Labour and Industrial Court. It was not necessary therefore in this case to exercise any other power than that contained in Article 227. This judgment is therefore of no use to the appellant. To the same effect is the judgment reported in the case ***Sushilabai Laxminarayan Mudliyar and Others*** Vs. ***Nihalchand Waghajibhai Shaha and Others***, AIR 1992 SC 185.

19. Another Division Bench of this Court consisting (H.L. Gokhale & V.K. Tahilramani, JJ.) in the case of ***A.G.Dhore & Others,*** Vs. ***Vaccum Plant & Instruments Mfg. Co. Ltd. & Anr.*** , also had an opportunity of considering this question

of maintainability of Letters Patent Appeal and the Hon'ble Judges have on detailed consideration of the entire case law on the point came to the conclusion that Letters Patent Appeal is not tenable where the jurisdiction is exercised or exercisable under the Article 227 of the Constitution of India. We are in respectful agreement with the views expressed in this judgment by other Division Bench and therefore deem it not necessary to again deal with all these cases usefully considered by the learned members of the Division Bench.

20. There is another aspect which we would like to note viz. the aspect of necessity to invoke Article 226 for correcting jurisdictional errors of Tribunals subordinate to the High Court was not considered. The position in law according to us existing today is therefore that Article 226 is available to this Court for correcting jurisdictional errors or errors resulting in miscarriage of justice by authorities which are not subordinate to this Court via Article 227 writ jurisdiction under Article 226 can be exercised for that purpose. However it need not be so exercised in relation to Tribunals subordinate to it under Article 227. In the instant case the basic order was passed by the Labour Court, the revisional order was passed by the Industrial Court and these two orders were considered by the learned Single Judge of this Court. It is clear case of exercise of power of superintendence under Article 227 of the Constitution of India. In such situation merely because article 226 is mentioned in the cause title of the petition it cannot be held that such a person is entitled to maintain an appeal. If this is to be accepted the necessary implication would be that those litigants who mention Articles 226 & 227 of the Constitution of India in the cause title of their petition had a remedy of Letters Patent Appeal and those who do not so mention loose the remedy. The necessary corollary

being conferral of this right to choose the Forum and remedy of litigants takes away jurisdiction of this Court to exercise its power under a particular Article. Taking into consideration all these aspects and the judgment of the Division Bench of this Court referred to above, in our opinion, Letters Patent Appeal in the instant case is not maintainable. It is accordingly dismissed.